



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Mr. Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-600

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27910.

The City of Richardson (the "city"), which you represent, has received a request for the "[c]omplete legal name, birthdate, bonding company, and current home address" of certain city officials, including the mayor, city manager, chief of police, and certain police officers and police department employees. You seek to withhold the requested information under sections 552.024, 552.101, 552.102, 552.103, and 552.108 of the Government Code.

As a threshold issue, we first address your contention that the request calls on the city to answer questions and to conduct research not required under the Open Records Act. You also maintain that the request requires the city to compile a list not already in existence. Generally, the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information or to prepare information in a form demanded by the requestor. See Open Records Decision Nos. 572 (1990) at 1; 458 (1987) at 2. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a

governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the city must make a good-faith effort to relate the request to information in the city's possession and must help the requestor to clarify his request by advising him of the types of information available. Beyond these requirements, however, the city need not generate new information to comply with the request.¹

Assuming that the city is in possession of records that contain the requested information, we now proceed to a discussion of the exceptions claimed as a basis for withholding this information from required public disclosure. We first address your assertion of sections 552.101 and 552.102 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 of the Government Code protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information must be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications and performance of public employees. *See* Open Records Decision No. 470 (1987) at 5. In the past, this office has concluded that the doctrine of common-law privacy does not protect an applicant's or employee's name; address; telephone number; educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; and social security numbers. *See generally* Open Records Decision No. 455 (1987) at 8; *see also* Open Records Decision No. 169 (1977). Accordingly, common-law privacy does not protect the requested information from required public disclosure.

¹We note, however, that the Open Records Act requires a minimal search or compilation of requested information. *See* Attorney General Opinion JM-672 (1987). Moreover, section 552.022 of the Government Code, without limiting the applicability of any of the Open Records Act's exceptions to required public disclosure, specifically makes public some of the requested information, *i.e.*, the names of public officials and employees.

Next, we address your argument under section 552.103 of the Government Code. Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3. A surmise that litigation will occur is not enough; there must be some concrete evidence pointing to litigation. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision Nos. 518 (1989) at 5; 328 (1982). This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 551, and when a requestor hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990).

You claim that the requested information relates to both pending and anticipated litigation. You have submitted to us for review what appears to be a notice of claim that the requestor served on the city under the Civil Rights Act, 42 U.S.C. § 1983. We conclude, therefore, that litigation may be reasonably anticipated. We do not understand, however, nor do you explain, how the requested information relates to an issue in the anticipated litigation. The mere fact that a request for information is made by a party to anticipated litigation does not mean that the information relates to an issue in the anticipated litigation. *See* Open Records Decision No. 361 (1983). We conclude, therefore, that you have not demonstrated how the requested information relates to the anticipated litigation.

Nor have you demonstrated that the requested information relates to the criminal cases pending in the city's municipal court. You say these cases involve prosecution for "No Operators License," "No Seat Belt," "Failure to Identify," "Expired Sticker," and "Expired Registration." We do not understand how the requested information relates to the pending litigation. Nor have you explained how it relates. Thus, because you have

not demonstrated how the requested information relates to the pending and anticipated litigation, the city may not withhold the requested information under section 552.103(a) of the Government Code.

Next, we address your contention that section 552.108 of the Government Code excepts the requested information from required public disclosure. Section 552.108 excepts:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

We understand that the requestor was arrested for several traffic violations, including "No Operators License," "No Seat Belt," "Failure to Identify," "Expired Sticker," and "Expired Registration." You advise us that the requested information is "information pertaining to law enforcement records." You do not claim, however that the requested information relates to an on-going law enforcement investigation. We assume that you claim that the requested information relates to the criminal actions pending against the requestor arising from his arrest for traffic violations. We fail to understand, however, nor have you explained, how the requested information, *e.g.*, the mayor's name and address, might relate to the requestor's arrest, unless the mayor is a codefendant in the case pending against the requestor. In addition, you have not explained how release of the information would unduly interfere with law enforcement. We conclude, therefore, that the city may not withhold the requested information under section 552.108 of the Government Code.

Finally, we address your assertion of section 552.024 of the Government Code. Section 552.024 provides a procedure whereby an employee or official of a governmental body may choose to prohibit the disclosure of his home address and telephone number.

Section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024.

Therefore, section 552.117 requires the city to withhold any home address or telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 requires the city to withhold any home address or telephone number of an official or employee who requested that this information be kept confidential under section 552.024. The city may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request is made. Open Records Decision No. 530 (1989) at 5. In summary, except for the home addresses and telephone numbers which the city must withhold under section 552.117, the city must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Ref.: ID# 27910

cc: Mr. Gerald H. Jantzi
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